In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-428

THE STATE OF ALABAMA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (Pet. App. A 5-26) is reported at 461 F.2d 1324.

JURISDICTION

The judgment of the Court of Claims was entered on June 16, 1972. The petition for a writ of certiorari was filed on September 14, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether moneys collected for reforestation by the Secretary of Agriculture, pursuant to Section 3 of the Knutson-Vandenberg Act, 16 U.S.C. 576(b), are part of the revenue base from which revenue-sharing payments to States are calculated under Section 13 of the Weeks Act, as amended, 16 U.S.C. 500.

STATUTES INVOLVED

The Weeks Act, 36 Stat. 963, as amended, as codified in Title 16 U.S.C. 500, provides:

> Twenty-five per centum of all moneys received during any fiscal year from each national forest shall be paid, at the end of such year, by the Secretary of the Treasury to the State in which such national forest is situated, to be expended as the State legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated: *Provided*, That when any national forest is in more than one State or county the distributive share to each from the proceeds of such forest shall be proportional to its area therein. In sales of logs, ties, poles, posts, cordwood, pulpwood, and other forest products the amounts made available for schools and roads by this section shall be based upon the stumpage value of the timber.

The Knutson-Vandenberg Act, 46 Stat. 527, as codified in Title 16 U.S.C. 576(b), provides:

> The Secretary of Agriculture may, when in his judgment such action will be in the public interest,

require any purchaser of national-forest timber to make deposits of money in addition to the payments for the timber, to cover the cost to the United States of (1) planting (including the production or purchase of young trees), (2) sowing with tree seeds (including the collection or purchase of such seeds), or (3) cutting, destroying, or otherwise removing undesirable trees or other growth, on the national-forest land cut over by the purchaser, in order to improve the future stand of timber: *Provided,* That the total amount so required to be deposited by any purchaser shall not exceed, on an acreage basis, the average cost of planting (including the production or purchase of young trees) other comparable national-forest lands during the previous three years. Such deposits shall be covered into the Treasury and shall constitute a special fund, which is appropriated and made available until expended, to cover the cost to the United States of such tree planting, seed sowing, and forest improvement work, as the Secretary of Agriculture may direct: *Provided,* That any portion of any deposit found to be in excess of the cost of doing said work shall, upon the determination that it is so in excess, be transferred to miscellaneous receipts, forest reserve fund, as a national-forest receipt of the fiscal year in which such transfer is made: *Provided further,* That the Secretary of Agriculture is authorized, upon application of the Secretary of the Interior, to furnish seedlings and/or young trees for replanting of burned-over areas in any national park.

STATEMENT

The State of Alabama filed this suit in the Court of Claims alleging that it was entitled to 25 percent of certain sums received by the United States in connection with the sale of timber in national forests located in Alabama. The facts are largely undisputed and are set forth in the comprehensive opinion of the Court of Claims (Pet. App. A 15-26).

The controversy concerns the interpretation of two federal statutes. The Weeks Act, 16 U.S.C. 500, directs that 25 percent of all monies received from each national forest be paid to the States for expenditures on schools and roads in the counties in which national forests are located. The Knutson-Vandenberg Act, 16 U.S.C. 576, provides that the Secretary of Agriculture may require any timber purchaser to make deposits of money *"in addition to the payments for the timber"* (emphasis added) to cover the cost to the United States of reforesting the area to be logged. The Act provides that such deposits "shall constitute a special fund" to be used to cover the cost of such forest improvement work as the Secretary may direct. Amounts, if any, not expended on reforestation or improvement of the sale area are to be transferred to "* * * miscellaneous receipts, forest reserve fund, as a national-forest receipt * * *."

Under long-standing Forest Service practice, the Knutson-Vandenberg deposits ("K-V deposits") are not included in the revenue base from which revenue-sharing payments under the Weeks Act are calculated. The Forest Service first estimates the amounts of K-V deposits necessary for reforestation work prior to al-

lowing timber bids. After bidding and receipt of the monies, the K-V deposits are segregated and placed in a separate account. K-V deposits, if any, found to be in excess of the sale areas' betterment needs are transferred to the National Forest Fund (formerly known as the forest reserve fund) from which the States receive their allotted share.

The State of Alabama contends that, under the Weeks Act, the entire amount of K-V deposits must be included in the revenue base from which the States are entitled to a 25 percent share. The Court of Claims, deciding the case on cross-motions for summary judgment, rejected that contention, holding that "* * * amounts collected and expended for K-V deposits under the Knutson-Vandenberg Act, are not * * * receipts from the sale of National Forest timber resources subject to the revenue sharing provisions of [the Weeks Act] * * *" (Pet. App. A 26).

ARGUMENT

The decision below dismissing petitioner's claim is correct and presents no question warranting review by this Court.

1. Read together, the Weeks Act and the subsequent Knutson-Vandenberg Act comprise a legislative scheme which provides for revenue sharing, but excludes K-V deposits in order to cover the cost to the United States of producing National Forest revenue. The Knutson-Vandenberg Act plainly states that K-V deposits "shall constitute a special fund * * * to cover the cost to the United States of such tree planting, seed sowing, and

forest improvement work, as the Secretary of Agriculture may direct * * *."

The Knutson-Vandenberg Act also states that "deposits" for sale area betterment are "in addition to the payments for the timber." This language obviously was meant to emphasize that these deposits are not "moneys received" within the meaning of the Weeks Act. Moreover, a proviso in the Knutson-Vandenberg Act requires that K-V deposits in excess of those required to complete sale area betterment work shall "* * * be transferred to miscellaneous receipts, forest reserve fund, as a national-forest receipt * * *." Unless Congress intended K-V deposits to be excluded from the meaning of "moneys received" as specified in the Weeks Act, there was no reason for characterizing only the transferred excess K-V deposits as a "national forest receipt."

As the Court of Claims explains (Pet. App. A 23-24), the 1944 Amendment to the Weeks Act basing state shares in the sales of forest products upon the "stumpage value" of the timber has no effect upon the legal status of K-V funds. This amendment merely limits state shares from sales of processed lumber to 25 percent of the value of the unprocessed timber.

2. Since the passage of the Knutson-Vandenberg Act in 1930, the Forest Service has never treated K-V deposits as subject to the revenue-sharing provisions of the Weeks Act. This long-standing interpretation by the agency charged with the administration of both Acts is entitled to great weight. *Udall* v. *Tallman*, 380 U.S. 1, 16; *Norwegian Nitrogen Products Co.* v. *United States*, 288 U.S. 294, 315.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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NOVEMBER 1972.

☆ U.S. Government Printing Office: 1972—487-228/283